

Testimony of

Diann L. Smith, Esq.

**General Counsel, Council On State Taxation (COST) 122 C Street NW, Suite 330
Washington, DC 20001 202/484-5215, dsmith@statetax.org**

**On the Issue of Draft Model Uniform Statute on
Compilation of State Tax Return Data – Part I**

**Before the Multistate Tax Commission
September 7, 2006**

The Council On State Taxation (COST) vigorously opposes the Multistate Tax Commission Executive Committee's decision to accept a second Commission vote on the "Uniform Statute on Compilation of State Tax Return Data." Holding a second vote on this failed proposal makes a mockery of the Multistate Tax Commission's (MTC) decision making process. By allowing this second vote, the Commission has shown an unfortunate disregard for the role of public comment and contribution. Finally, the decision to move forward with a vote on a proposal which is unfinished and unable to be implemented smacks of wanton disregard of the MTC's established processes – something that a governmental organization should be bound to follow. In this document, COST addresses the procedural problems with this proposal being officially adopted by the MTC. In a separate document, COST discusses the substantive problems with the proposal.

First, COST opposes the attempt to adopt the proposal less than one month after the exact same proposal failed to pass at the MTC's Annual Meeting. After having heard substantial public opposition to the proposal at the Annual Meeting, the Commission's decision to move forward with a second vote demonstrates a disquieting lack of respect for the public. At the Annual Meeting (of which all MTC members had been aware for months), representatives of two of the largest organizations of multistate taxpayers – COST and AICPA – took the time, expense, and effort to present the thoughts and concerns of their constituencies on this proposal. Both representatives engaged in significant dialogue with Commission members in attendance and fielded questions from such members. However, because several MTC members were not in attendance at the meeting, those members did not have the benefit of listening to the public comments, member questions, and the public's responses. In order that the missing members have the benefit of public comment, both COST and the AICPA will have to go through the identical process and discussion all over again before the next vote – a significant waste of everyone's resources. It is very troubling that MTC members that did not care enough about the proposal to participate in the vote at the Annual Meeting can be quickly corralled less than 30 days later for another, hasty, vote.

The MTC has established policies and procedures for its voting and by doing so guarantees that its member states have a voice in MTC policy initiatives. Those procedures were followed at the Annual Meeting and the result was that the specific proposal under consideration here was not supported by the requisite number of states. While the Commission may have effectively used the last 30 days to lean on its members to get them to vote in favor of the proposal, this practice destroys the credibility of the MTC's processes and participants.

The proposal is also unique, in a negative way, in the path it took to the full Commission vote. The proposal has never had the benefit of either careful examination by stakeholders – such as multistate business taxpayers or tax preparers, or real world experience. This lack of careful testing has occurred for several reasons. First, the proposal was never a stand-alone proposal until the full Commission meeting at the Annual Meeting in July. Since it was always but one part of a larger proposal – the Model Uniform Statute on Disclosure of Reportable Transactions – and usually just one of several options at that, it received consideration only as part of a greater whole. Second, the proposal has always been skeletal in nature and has never been capable of stand-alone implementation. It was not until after a draft of an actual spreadsheet was created that much of the requirement could even be visualized. This spreadsheet itself was never subject to review or discussions by the MTC’s Income Tax Subcommittee or full Uniformity Committee and was never available for a Public Hearing with the requirement of a Hearing Officer’s report addressing any Public Comment. As such there is no evidence that the spreadsheet is capable of implementation (and much evidence to the contrary, see COST’s substantive comments). Third, a significant change in the proposal, the option to file copies of other states’ tax returns, has never been subject to any public comment or even offered as statutory language on which comment was accepted. The option is void of any explanation as to what returns would be required and when. No one has ever determined what the volume of paper required to comply with this option entails and whether it is in any way manageable by a state tax department. Finally, unlike most MTC proposals that are based on real world experience of existing law – defining “unitary”, determining financial institution apportionment rules, etc. – there is no real world experience with the burden and usefulness of mandating a 51-state spreadsheet as the proposal requires. Thus, rather than allowing only a cursory analysis as occurred here, the lack of real world experience would seem to dictate even more rigorous analysis of the issues surrounding adoption.

In sum, the entire proposal is hastily compiled and lacks any careful consideration of what it will take to implement, what it will cost taxpayers, and how it will actually be used by tax administrators. Since the implementation date in the proposal is not for another two years, there seems to be no principled reason for adopting this proposal now, unless the implementation date is not intended to be respected.

The MTC has accomplished several steps in the recent months toward establishing trust with the multistate business community. Opening up its teleconference calls to the public is one example that has increased the transparency of the MTC process and the comfort level of taxpayers. Participation by hotel Internet intermediaries and telecom companies in educating the MTC member states about their businesses are other examples of the benefits of collaboration. However, when the MTC or its member states appear to disregard an established process such as the use of public comment and a Commission wide vote following a lengthy vetting process, the question of trust and fairness cannot help but be called into question again. There is no reason why this proposal should be adopted now and many reasons, procedural and substantive, why the proposal should be voted down.

Commission members, by voting in favor of this proposal, are affirmatively voting their state’s support of this concept and the process by which it was adopted. COST asks the member States to question whether, as representatives of their individual states, the members agree that the proposal is a good proposal, as it stands now and whether they are comfortable with the process by which this proposal has come before them. Further, COST asks the member States whether their Governor and legislative leadership would support the proposal and whether they are aware that the State is about to voice its policy preference regarding this proposal. In our discussions we have found that few if any of the State policy makers who would be asked to adopt such a proposal have been solicited for their opinion. We intend to follow up on each Member State’s

vote on this important issue and publicize the signal it sends to multistate businesses regarding the environment of that member state.